

LIBRARY
THE COURT. U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1958

No. 584

LOUISE LASSITER, APPELLANT,

vs.

NORTHAMPTON COUNTY BOARD OF ELECTIONS

APPEAL FROM THE SUPREME COURT OF THE STATE
OF NORTH CAROLINA

FILED SEPTEMBER 2, 1958.
JURISDICTION NOTED DECEMBER 15, 1958.

Supreme Court of the United States

OCTOBER TERM, 1958

No. 584

LOUISE LASSITER, APPELLANT,

vs.

NORTHAMPTON COUNTY BOARD OF ELECTIONS

APPEAL FROM THE SUPREME COURT OF THE STATE
OF NORTH CAROLINA

INDEX

Original Print

Record from the Superior Court of Northampton
County, State of North Carolina

Organization of court.....	1	1
Notice of appeal to County Board of Elections from denial of registration by Precinct Reg- istrar Helen H. Taylor.....	2	2
Order of Board of Elections.....	3	3
Notice of appeal to the Superior Court.....	4	4
Notice of appeal to County Board of Elections from denial of registration by Precinct Reg- istrar Helen H. Taylor.....	5	5
Certification to transcript of record.....	6	6
Stipulations of counsel.....	7	6
Motion of Louise Lassiter for directed verdict and finding and denial thereof.....	11	10
Special request for findings of fact and con- clusions of law and denial thereof.....	12	11
Judgment.....	13	12
Appeal entries and notice of appeal to Supreme Court of North Carolina.....	14	13
Exceptions to judgment.....	14	13
Assignments of error.....	16	15
Statement of case on appeal.....	18	17
Stipulation as to record.....	20	19

INDEX

	Original	Print
--	----------	-------

Proceedings in the Supreme Court of North Carolina	21	19
Opinion, Winborne, C.J.....	21	19
Judgment	35	34
Clerk's certificate	36	34
Notice of appeal to Supreme Court of the United States	38	35
Order granting motion for leave to proceed in forma pauperis	42	39
Order noting probable jurisdiction.....	44	39

IN THE SUPERIOR COURT OF NORTHAMPTON
COUNTY, STATE OF NORTH CAROLINA

LOUISE LASSITER

v.

NORTHAMPTON COUNTY BOARD OF ELECTIONS

Before PAUL, J., August 1957 Term, Northampton
Superior Court. PLAINTIFFAppealed.

ORGANIZATION OF COURT

BE IT REMEMBERED that a Superior Court for the County of Northampton is this day opened and held in the Courthouse in Jackson, North Carolina, on the fourth Monday before the first Monday in September, 1957, the same being the 5th day of August, 1957. Present: The Honorable Malcolm C. Paul, Judge of the Second Judicial District, presiding.

The following members of the Grand Jury report for duty: W. J. Long, Jr., Foreman, and others (naming them). Wilson W. Baird, Allen Brown and Johnnie Stancell are excused due to illness.

Then comes E. Frank Outland, Esq., Sheriff of said County, into open court and returns the following good and lawful persons by him summoned to serve as jurors for the said term of Superior Court, to wit, John Cross and others (naming them). Mrs. D. G. Britton and others (naming them) are excused. B. B. Tant, J. P. Hargrove [fol. 2] and W. H. Blowe are reported by the Sheriff "Not to be found in Northampton County," also W. H. Shakelford. The remaining 21 good and lawful persons are sworn in as petit jurors for the term.

Honorable E. R. Tyler, Solicitor for the Sixth Judicial District, is present on behalf of the State.

The following proceedings are had:

At 4:00 P.M. Court takes a recess until Tuesday morning, August 6, 1957, at 10 o'clock.

/s/ M. C. Paul
JUDGE PRESIDING.

Court opens, pursuant to a recess, Friday morning, August 9, 1957, at 10 o'clock.

The following proceedings are had:

STIPULATIONS OF COUNSEL:

(The contents of this Stipulation appear elsewhere in this record.)

JUDGMENT: (The contents of this Judgment appear elsewhere in this record.)

At 12:45 P.M. Court takes a recess.

/s/ M. C. Paul
JUDGE PRESIDING.

NORTH CAROLINA, NORTHHAMPTON COUNTY

In the Matter of the Application for Registration as a Voter of Louise Lassiter

NOTICE OF APPEAL TO COUNTY BOARD OF ELECTIONS FROM DENIAL OF REGISTRATION BY PRECINCT REGISTRAR
HELEN H. TAYLOR—June 22, 1957

Notice is hereby given that Louise Lassiter, who applied to the Registrar of Seaboard Precinct for registration as a voter on the 22 day of June, 1957, and who was denied registration by said Registrar, one Helen H. [fol. 3] Taylor, has appealed from the decision of said Registrar to the County Board of Elections. Notice is further hereby given that the full name of the applicant for registration is Louise Lassiter; that the applicant's age is 41 years; and that the applicant's address is Sea-

board, Northhampton County, North Carolina, and correctly listed below.

Finally, Notice is hereby given that the reason for this appeal from the Seaboard Registrar's decision denying registration to the applicant, is that the applicant was denied registration because of the applicant's failure to submit to an educational test, which is presumably provided in North Carolina General Statutes 163-28, amended, and that the applicant in good faith contends that the said educational test is invalid, void and unconstitutional, and that applicant further contends that applicant is entitled to be registered without submission to the ordeal of the educational test.

This 22 day of June, 1957.

/s/ Louise Lassiter Applicant.

Address: Mrs. Louise Lassiter, Route 1,
Box 180, Seaboard, N. C.

BEFORE THE BOARD OF ELECTIONS

ORDER OF BOARD OF ELECTIONS

In the Matter of the Application for Registration as a Voter of Mary Ellen Edwards and Louise Lassiter.

This cause coming on to be heard and being heard by W. W. Grant, W. T. Outland and Russell Johnson, Jr., who comprise the Northhampton County Board of Elections, and it being found as a fact by said Board that the Petitioners Louise Lassiter and Mary Ellen Edwards were refused registration on June 22, 1957, by the Registrar [fol. 4] of the Seaboard Preinct because of their refusal to read any section of the North Carolina Constitution, and it further being found as a fact that said petitioners refused on June 28, 1957, on the *de novo* hearing before the Board of Elections, to read any section of said State Constitution and it appearing to the Board that the law of North Carolina requires that each registrant read any section of said Constitution, it is therefore ordered: That Louise Lassiter and Mary Ellen Edwards be not registered and are not entitled to be

registered on the Registration Books of Northampton County because of their failure to comply with the Registration Laws.

/s/ Russell H. Johnson, Jr.
/s/ W. W. Grant

NOTICE OF APPEAL TO SUPERIOR COURT WAS GIVEN ORALLY
BY ATTORNEY JAMES WALKER OF WELDON, N.C.

Before the County Board of Elections

NOTICE OF APPEAL TO THE SUPERIOR COURT.

Louise Lassiter

v.

Northampton County Board of Elections and Russell H. Johnson, Jr., Board Chairman, and W. W. Grant and W. T. Outland, all of whom constitute the full membership of said Board.

To THE NORTHAMPTON COUNTY BOARD OF ELECTIONS:

NOTICE is hereby given that Louise Lassiter, who applied to the Registrar of the Seaboard Voting Precinct for registration as a voter on the 22nd day of June, 1957, and who appealed in writing to the County Board of Elections on the same day from the said Registrar's denial of registration, has appealed from the decision and order of the County Board of Elections, which is dated the 28th day of June, 1957, to the Superior Court of [fol. 5] Northampton County as is by law provided. NOTICE is further hereby given that a copy of the Notice of Appeal which was filed with the Registrar on the 22nd day of June, 1957, to her denial of registration to Appellant is attached to the INSTANT NOTICE and all statements therein made are made a part of this Paragraph with the same effect as if herein specifically set out.

This 28th day of June, 1957,

/s/ Louise Lassiter
Appellant and Applicant for
Registration as a Voter.

NOTICE OF APPEAL TO COUNTY BOARD OF ELECTIONS FROM
DENIAL OF REGISTRATION BY PRECINCT REGISTRAR
HELEN H. TAYLOR

NORTH CAROLINA
NORTHAMPTON COUNTY

In the Matter of the Application for Registration as a Voter of Louise Lassiter.

Notice is hereby given that Louise Lassiter, who applied to the Registrar of Seaboard Precinct for registration as a voter on the 22 day of June, 1957, and who was denied registration by said Registrar, one Helen H. Taylor, has appealed from the decision of said Registrar to the County Board of Elections. Notice is further hereby given that the full name of the applicant for registration is Louise Lassiter; that the applicant's age is 41 years; and that the applicant's address is Seaboard, Northampton County, North Carolina, and correctly listed below.

Finally, Notice is hereby given that the reason for this appeal from the Seaboard Registrar's decision denying registration to the applicant, is that the applicant was denied registration because of the applicant's failure to submit to an educational test, which is presumably provided in North Carolina General Statutes 163-28, amended, and that the applicant in good faith contends that the said [fol. 6] educational test is invalid, void and unconstitutional, and that applicant further contends that applicant is entitled to be registered without submission to the ordeal of the educational test.

This 22 day of June, 1957.

/s/ Louise Lassiter Applicant.

Address: Mrs. Louise Lassiter, Route 1,
Box 180, Seaboard, N. C.

Before the Board of Elections

**CERTIFICATION OF TRANSCRIPT OF RECORD BY COUNTY
BOARD OF ELECTIONS**

**NORTH CAROLINA
NORTHHAMPTON COUNTY**

**Before the County
Board of Elections**

Louise Lassiter

vs.

Northampton County Board of Elections and Russell H. Johnson, Jr., Board Chairman, and W. W. Grant and W. T. Outland, all of whom constitute the full membership of said Board.

This is to certify that the matter hereto attached, to wit: NOTICE OF APPEAL from denial of registration by Precinct Registrar Helen H. Taylor, DECISION and ORDER of the Northampton County Board of Elections dated the 28 day of June, 1957, and NOTICE OF APPEAL to the Superior Court from the decision and order of the Board of Elections, which latter mentioned Notice of Appeal is dated the 28 day of June, 1957, constitutes a full, complete and accurate Transcript of Record of the matter, as the same appears from the Records of the Northampton County Board of Elections.

This 2 day of July, 1957.

/s/ Russell H. Johnson, Jr.

TITLE: Chairman
of Northampton County Board
of Elections.

[fol. 7] In the Superior Court of Northampton County

STIPULATIONS OF COUNSEL (AUG. TERM, 1957)

Counsel for petitioner and counsel for respondents, being of the opinion that the resolution of this controversy depends upon a question of law and having heretofore waived a jury trial in the cause and consented that

the Court may hear and resolve said matter upon an agreed statement of facts, stipulate the following:

1. That the Petitioner herein, to wit, Louise Lassiter, is a Negro, is now a resident of Seaboard Voting Precinct of Northhampton County, North Carolina, has been such resident continuously for more than 18 years, and was such resident on the 22nd day of June, 1957.
2. That the said Louise Lassiter is of voting age, to wit, being more than 21 years of age and that she was of such voting age on and before the said 22nd day of June, 1957.
3. That the said Louise Lassiter is not now one of the persons excluded from eligibility to register and vote within the contemplation, meaning and intent of Section 163-24, of General Statutes of North Carolina, and was not on the 22nd day of June, 1957, within any of the categories of persons excluded from registration and voting by said statute.
4. That the said Louise Lassiter, by virtue of her continuous residence in and claim of continuous residence in the aforesaid Seaboard Precinct, Northhampton County, North Carolina, is not eligible to register as a voter in any other precinct in the State of North Carolina.
5. That the said Louise Lassiter is not now registered and never has been registered as a voter for the purpose of voting in the said Seaboard Precinct, nor in any other voting precinct within the State of North Carolina, nor in any other town, city or State.
6. That on the 22nd day of June, 1957, the said Louise [fol. 8] Lassiter, in due and normal course and within the hour limits prescribed, presented herself to the duly appointed and acting registrar of the said Seaboard Precinct, to wit, Mrs. Helen H. Taylor, and requested to be registered as a voter for and in a special election scheduled to be held on July 13, 1957, for the voting citizens of Northhampton County.
7. That upon presenting herself to the said registrar, the said Louise Lassiter subscribed to the oath generally and usually required of applicants for registration.
8. That following the taking of and subscribing to said oath the said registrar, to wit, Mrs. Helen H. Taylor, presented to the said Louise Lassiter a printed copy of

the Constitution of the State of North Carolina and requested and required of the said Louise Lassiter that she read certain designated sections thereof.

9. That the said Louise Lassiter declined and refused to read the proffered sections of the said Constitution, or any other section thereof, as a prerequisite to her being registered as a voter, for that the said Louise Lassiter contended and asserted and still contends and asserts that such requirement of reading said Constitution was and is unlawful, the same being in violation of the Constitution and laws of the State of North Carolina, and the Constitution and laws of the United States.

10. That the said registrar, to wit, Mrs. Helen H. Taylor, upon the declining and refusing of the said Louise Lassiter to read the proffered sections of the Constitution of North Carolina, then and there refused to register and did not register the said Louise Lassiter, upon the ground that she, the said Louise Lassiter, failed to meet one of the prerequisites for registration, namely, reading any section of the Constitution of North Carolina in the English language.

[fol. 9] 11. That on the same day of refusal of registration to her, upon the ground hereinbefore set forth, to wit, on the 22nd day of June, 1957, the said Louise Lassiter gave written notice to the said registrar of appeal from said denial of registration by said registrar to the Board of Elections of Northampton County.

12. That on the 28th day of June, 1957, the appeal of the said Louise Lassiter from the denial of registration by the aforesaid registrar was heard by and before the Board of Elections of Northampton County, sitting and convened as a body and administrative board in the Courthouse building of Northampton County, in Jackson, North Carolina.

13. That the said Board of Elections of Northampton County, being duly constituted and convened, as aforesaid, heard and entertained the aforesaid appeal of the said Louise Lassiter *de novo*.

14. That in said hearing and as a part of said hearing to determine the eligibility of the said Louise Lassiter to register as a voter, the said Board of Elections requested of the said Louise Lassiter that she read certain design-

nated sections of the Constitution of North Carolina from a printed copy of said Constitution supplied her.

15. That the said Louise Lassiter declined and refused the said Board's request and requirement that she read the proffered sections of said Constitution, or any other section thereof, as a prerequisite to her being registered as a voter, for that the said Louise Lassiter contended and asserted and still contends and asserts that such requirement of reading said Constitution was and is unlawful, the same being in violation of the Constitution and the laws of the State of North Carolina, and the Constitution and laws of the United States.

16. That the said Board of Elections, upon the said [fol. 10] Louise Lassiter's failing and refusing to read the proffered sections of the said Constitution, or any other sections thereof, issued a written order and directed that the said Louise Lassiter be denied registration as a voter in the Seaboard Precinct, upon the ground that she, the said Louise Lassiter, failed to meet one of the prerequisites for registration, namely, reading any section of the Constitution of North Carolina in the English language.

17. That on the 28th day of June, 1957, the said Louise Lassiter filed and caused to be filed with the Board of Elections of Northampton County a written notice of appeal from said Board's denial of registration as a voter to the Superior Court of Northampton County.

18. That on the 5th day of July, 1957, the appeal of the said Louise Lassiter from the said Board in said matter to the aforesaid Superior Court was docketed in said Superior Court.

19. That the said Louise Lassiter, because of her lack of educational qualifications, on June 22, 1957, and continuously since said date until the present date, is unable to and has failed and refused to write or read, or attempt to write or read, any section of the Constitution of North Carolina, or any section of the Constitution of the United States in the English language.

20. That aside from her failure, refusal and inability to read or write any section or sections of the Constitution of North Carolina, or any section or sections of the Constitution of the United States in the English language,

the said Louise Lassiter meets the other statutory qualifications for eligibility to be registered as a voter in Seaboard Precinct, Northampton County, North Carolina.

21. That this cause is duly before the Superior Court [fol 11] of Northampton County at this term in conformity with Chapter 163 of the General Statutes of North Carolina for trial or hearing and decision of the matters herein involved.

/s/ James R. Walker, Jr.

/s/ Taylor & Mitchell

COUNSEL FOR PLAINTIFF.

/s/ E. N. Riddle

/s/ Russell H. Johnson, Jr.

COUNSEL FOR DEFENDANT.

In the Superior Court of Northampton County

MOTION OF LOUISE LASSITER FOR DIRECTED VERDICT AND
FINDING AND DENIAL THEREOF

Now comes petitioner in the above entitled matter, to wit, Louise Lassiter, through her counsel, the undersigned, and moves the Court, upon the facts and evidence stipulated and presented herein and the applicable law, that a Directed Verdict and Finding be entered in her favor in this cause, upon the ground that the failure and refusal of the Registrar of the Seaboard Precinct of Northampton County and the failure and refusal of the Board of Elections of Northampton County to enter and cause to be entered her name upon the book of qualified registered voters because of her failure and refusal to read any section of the Constitution of North Carolina as a prerequisite to being so registered, as required by North Carolina General Statutes, Section 163-28, as amended, is unlawful, as being in violation of Article VI, Section 1 of the Constitution of the State of North Carolina, and in violation of the 14th, 15th, and 17th Amendments to the Constitution of the United States.

Petitioner further moves the Court that upon the entry of such Directed Verdict and Finding the Court set aside the order and ruling of the said Registrar and the said

Board of Elections denying her such registration and enter an order directing said Registrar and the said Board of Elections to enroll and place her name upon the book of registered voters, without regard to and free of [fol. 12] any requirement that she read or write any section of the Constitution of North Carolina as a prerequisite to her being so registered.

This 9th day of August, 1957.

/s/ James R. Walker, Jr.

/s/ Taylor & Mitchell
Counsel for Petitioner.

The foregoing Motion of Petitioner is denied.

This 9th day of August, 1957. Plaintiff excepts.

/s/ M. C. Paul
Judge Presiding.

In The Superior Court of Northampton County

SPECIAL REQUEST FOR FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND DENIAL THEREOF

Now comes Louise Lassiter, petitioner in the above entitled matter, through her counsel, the undersigned, and makes this special request of the Court that the Court make and enter the following Finding of Fact and Conclusions of Law, to wit:

FINDING OF FACT

That the Registrar of Seaboard Precinct of Northampton County and the Board of Elections of Northampton County failed and refused to register petitioner Louise Lassiter as a qualified voter upon the ground that the said Louise Lassiter failed and refused to read or write any section of the Constitution of North Carolina, as required by North Carolina General Statutes, Section 163-28, as amended.

CONCLUSIONS OF LAW

1. That the requirement by the Registrar of Seaboard Precinct and by the Northampton County Board of Elections, in application of the provision of Section 163-28 of General Statutes of North Carolina, as amended, that the [fol. 13] said Louise Lassiter be able to read or write any section of the Constitution of North Carolina, as a prerequisite to being registered as a qualified voter is unlawful, the same being in violation of Article VI, Section I of the Constitution of North Carolina, and in violation of the 14th, 15th, and 17th Amendments to the Constitution of the United States.

2. That the said Louise Lassiter is entitled to be registered as a qualified voter in Seaboard Precinct of Northampton County free of and without regard to any requirement of reading or writing any section of the Constitution of North Carolina as a prerequisite to such registration.

Submitted, this 9th day of August, 1957.

/s/ James R. Walker, Jr.

/s/ Taylor & Mitchell

Counsel for Petitioner.

The foregoing Special Request for Finding of Fact and Conclusions of Law is denied. Plaintiff Excepts.

This 9th day of August, 1957.

/s/ M. C. Paul
Judge Presiding.

In the Superior Court of Northampton County

JUDGMENT OF PAUL, J.—August 1957 Term

This cause came on for hearing and was heard before the undersigned Judge Presiding at the above term of court. The parties, through counsel, announced that there was no dispute as to the facts, and that they had agreed in writing as to the facts involved in this hearing, copy of said facts being submitted to the Court.

After reading and considering the agreed facts, and after hearing argument of counsel for the plaintiff and the defendant, the Court is of the opinion that under said agreed facts plaintiff is not entitled to be registered as a qualified voter in Seaboard Precinct, Northampton [fol. 14] County, North Carolina, for that said plaintiff does not meet the requirements of Chapter 163, Section 28 of the General Statutes of North Carolina.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that plaintiff is not entitled to be registered as a qualified voter in Seaboard Precinct, Northampton County, North Carolina, and that plaintiff's prayer for relief, as set out in her notice of appeal to this Court, be, and the same is hereby denied.

The costs of this action will be taxed against the plaintiff.

/s/ M. C. Paul
JUDGE PRESIDING.

In the Superior Court of Northampton County
APPEAL ENTRIES AND NOTICE OF APPEAL TO SUPREME COURT
OF NORTH CAROLINA

To the entry and signing of the foregoing judgment, the plaintiff excepts and gives notice of appeal to the Supreme Court of North Carolina; notice being given in open court. Further notice waived. The plaintiff, by consent, is allowed 15 days to prepare and serve case on appeal; the defendant is allowed 15 days after service of said case on appeal to serve counter-case or exceptions. Appeal bond fixed at \$100.00.

/s/ M. C. Paul
JUDGE PRESIDING.

In the Superior Court of Northampton County
EXCEPTIONS TO JUDGMENT

To THE JUDGMENT rendered against the plaintiff on the 9th day of August, 1957, the plaintiff files the following EXCEPTIONS:

1. The plaintiff objects and excepts to the Judgment of the Court in that the Court erred in its legal conclusion that North Carolina General Statutes 163-28 is valid and in that the said statutory provision is unconstitutional and in conflict with Art. VI, Sec. I of the Constitution of N. C. and other provisions of the N. C. Constitution.

[fol. 15] The plaintiff objects and excepts to the Judgment of the Court in that the Court upheld the validity of the educational test presumably provided in North Carolina General Statutes 163-28, whereas the purported legislative requirement of said test is a usurpation by the General Assembly of power which is retained in the people of North Carolina.

3. The plaintiff objects and excepts to the Judgment of the Court in that the Court upheld the validity of the educational test presumably provided in North Carolina General Statutes 163-28 against the plaintiff's contention that the same is unconstitutional and invalid because of conflict with the Fourteenth Amendment to the Constitution of the United States, whereas the said educational test is, as contended by plaintiff, in conflict with the Fourteenth Amendment to the Constitution of the United States.

4. The plaintiff objects and excepts to the Judgment of the Court in that the Court upheld the validity of the educational test presumably provided in North Carolina General Statutes 163-28 against the plaintiff's contention that the same is unconstitutional and invalid because of conflict with the Fifteenth Amendment to the Constitution of the United States, whereas the said educational test is, as contended by plaintiff, in conflict with the Fifteenth Amendment to the Constitution of the United States.

5. The plaintiff objects and excepts to the Judgment of the Court in that the Court upheld the validity of the educational test presumably provided in North Carolina General Statutes 163-28 against the plaintiff's contention that the same is unconstitutional and invalid because of conflict with the Seventeenth Amendment to the Constitution of the United States, whereas the said educational test is, as contended by plaintiff, in conflict with the 17th Amendment to the Constitution of the United States.

[fol. 16] 6. The plaintiff objects and excepts to the Judgment of the Court in that the Court decreed that plaintiff is not entitled to be registered as a qualified voter in Seaboard Precinct, Northampton County, North Carolina, whereas plaintiff meets all lawful requirements for such registration.

This 14th day of August, 1957.

/s/ James R. Walter
501 West Third Street
Weldon, North Carolina

/s/ Taylor & Mitchell
125 East Hargett Street
Raleigh, North Carolina
ATTORNEYS FOR PLAINTIFF.

In the Superior Court of Northhampton County

ASSIGNMENTS OF ERROR

Plaintiff groups her exceptions and assigns error as follows:

1. The Court below committed prejudicial and reversible error in upholding the validity of North Carolina General Statutes 163-28 and of the educational test therein provided against plaintiff's contentions that the same is unconstitutional by the standards of the Constitution of North Carolina and by the standards of Article VI, Section I, of the North Carolina Constitution in particular, which error is pointed up by plaintiff's EXCEPTIONS 1, 2 and 6 (R pp 14, 15) and by plaintiff's Exception to the Court's overruling of her motion for Directed Verdict, by the plaintiff's Exception to the Court's denial of her Special Request for Finding of Fact and Conclusions of Law and by plaintiff's Exception to the signing and entry of Judgment.

2. The Court below committed prejudicial and reversible error in upholding the validity of North Carolina General Statutes 163-28 and of the educational test therein provided against plaintiff's contentions that the same

[fol. 17] is unconstitutional by the standards of the Fourteenth Amendment to the Constitution of the United States, which error is pointed up by plaintiff's EXCEPTION #3 (R p 15), by plaintiff's Exception to the Court's overruling of her motion for Directed Verdict, by the plaintiff's Exception to the Court's denial of her Special Request for Finding of Fact and Conclusions of Law and by plaintiff's Exception to the signing and entry of Judgment.

3. The Court below committed prejudicial and reversible error in upholding the validity of North Carolina General Statutes 163-28 and of the educational test therein provided against plaintiff's contentions that the same is unconstitutional by the standards of the Fifteenth Amendment to the Constitution of the United States, which error is pointed up by plaintiff's EXCEPTION #4 (R p 15), by plaintiff's Exception to the Court's overruling of her motion for Directed Verdict, by the plaintiff's Exception to the Court's denial of her Special Request for Finding of Fact and Conclusions of Law and by plaintiff's Exception to the signing and entry of Judgment.

4. The Court below committed prejudicial and reversible error in upholding the validity of North Carolina General Statutes 163-28 and of the educational test therein provided against plaintiff's contentions that the same is unconstitutional by the standards of the Seventeenth Amendment to the Constitution of the United States, which error is pointed up by plaintiff's EXCEPTION #5 (R p 15), by plaintiff's Exception to the Court's overruling of her motion for Directed Verdict, by the plaintiff's Exception to the Court's denial of her Special Request for Finding of Fact and Conclusions of Law and by plaintiff's Exception to the signing and entry of Judgment.

5. The Court below committed prejudicial and reversible error by decreeing that plaintiff is not entitled [fol. 18] to be registered as a qualified voter in Seaboard Precinct, Northampton County, North Carolina, which error is pointed up by plaintiff's EXCEPTION #6 (R p 16), by plaintiff's Exception to the Court's overruling of her motion for Directed Verdict, by the plaintiff's Exception to the Court's denial of her Special Request for Finding

of Fact and Conclusions of Law and by plaintiff's Exception to the signing and entry of Judgment.

This 14th day of August, 1957.

/s/ James R. Walker, Jr.

/s/ Taylor & Mitchell

In the Superior Court of Northhampton County

STATEMENT OF CASE ON APPEAL

This is a civil action which was heard before his Honor Malcolm C. Paul without a jury at the August 1957 Term of Court. The parties expressly waived a jury trial with the assent of the Court. Attorney James R. Walker, Jr., of Weldon, North Carolina, and Attorney Herman L. Taylor, of the Raleigh Law Firm of Taylor and Mitchell, appeared for and represented the plaintiff. Attorney E. N. Riddle, of Jackson, North Carolina, and Attorney Russell H. Johnson, Jr., of Conway, North Carolina, appeared for and represented the defendant Board of Elections.

The parties to this action were in agreement as to the facts of this case and entered into WRITTEN STIPULATIONS of the facts agreed upon. These Stipulations are numbered 1 through 21 and were filed as a part of the Records in this cause. The said Stipulations, as they appear in the Record in this cause, are made an integral part of this paragraph to the same effect as if herein specifically set out.

Following the signing, making, execution and entry of the Stipulations mentioned in the foregoing paragraph, the plaintiff made a motion, which was reduced to writing, for a directed verdict and for a finding in her favor. [fol. 19] The motion was denied by the Court, and the Court's denial thereof and plaintiff's exception to such denial were noted at the foot of said motion by his Honor Malcolm C. Paul, Judge Presiding. The motion, the Court's denial of same and plaintiff's exception thereto are all a part of the Record in this cause, and plaintiff makes this matter, as it appears in the Record, an integral part of this paragraph as if herein specifically set out.

Following the denial of plaintiff's motion, plaintiff tendered to the Court a written Special Request for Findings of Fact and Conclusions of Law. This Special Request for Findings of Fact and Conclusions of Law was denied by the Court, and the Court's denial thereof and plaintiff's exception thereto were noted at the foot of said Special Request by his Honor Malcolm C. Paul, Judge Presiding. The Special Request herein mentioned, its denial and the exception to such denial are all a part of the Record in this cause, and plaintiff makes this matter, as it appears in the Record, an integral part of this paragraph to the same effect as if herein specifically set out.

The Court then entered judgment in this cause on Friday, August 9, 1957, in which it was "ordered, adjudged and decreed that plaintiff is not entitled to be registered as a qualified voter in Seaboard Precinct, Northhampton County, North Carolina, and that plaintiff's prayer for relief, as set out in her notice of appeal to this Court, be, and the same is hereby denied." To the entry and signing of this judgment, plaintiff appealed in open Court to the Supreme Court of North Carolina. Appeal bond was set at \$100.00. Plaintiff's appeal entries were entered at the foot of said judgment by the Court. Said judgment and appeal entries are a part of the Record in this cause and the same, as they appear in the Record, are made an integral part of this paragraph to the same effect as if herein specifically set out.

[fol. 20] On the 15th day of August, 1957, plaintiff filed with the Clerk of Superior Court six numbered Exceptions to the Judgment of the Court and also five Assignments of Error. The Exceptions to Judgment and Assignments of Error, as they appear in the Record of this cause, are hereby made an integral part of this paragraph to the same effect as if herein specifically set out.

Respectfully submitted,

/s/ James R. Walker, Jr.
Weldon, North Carolina

/s/ Taylor and Mitchell
Raleigh, North Carolina
ATTORNEYS FOR PLAINTIFF.

SERVICE of the above Statement of Case on Appeal in the case of Lassiter v. Northampton County Board of Elections, consisting of 3 pages, is hereby accepted and receipt of a copy of the same is hereby acknowledged.

This 19th day of August, 1957.

/s/ E. N. Riddle.

In the Superior Court of Northampton County

STIPULATION AS TO RECORD

It is stipulated by and between counsel for plaintiff and counsel for defendant that the foregoing Statement, consisting of 3 pages, together with the Judgment Roll, shall constitute the case on appeal in the foregoing cause.

This 19th day of August, 1957.

/s/ James R. Walker, Jr.,
of Counsel for Plaintiff.

/s/ E. N. Riddle,
of Counsel for Defendant.

[fol. 21] IN THE SUPREME COURT OF NORTH CAROLINA
No. 170—Northampton

Louise Lassiter

v.

Northampton County Board of Elections

OPINION—April 9, 1958

Appeal by plaintiff from Paul, J., at August 1957 Term, of Northampton.

Civil proceeding predicated upon denial by the Registrar of Seaboard Voting Precinct, Northampton County, North Carolina, of application of plaintiff, Louise Lassiter, 41 years of age, for registration as a voter in said precinct for the reason that she, the plaintiff, failed to submit to an educational test required by General Statute 163-28 amended, of the State of North Carolina.

Counsel for petitioner and counsel for respondents, being of opinion that the resolution of this controversy depends upon a question of law, and, having waived a jury trial in the cause, consented that the court might hear and resolve said matter upon an agreed statement of facts, stipulate the following:

"1. That the petitioner herein, to wit, Louise Lassiter, is a Negro, is now a resident of Seaboard Voting Precinct of Northhampton County, North Carolina, has been such resident continuously for more than 18 years, and was such resident on the 22nd day of June, 1957..

"2. That the said Louise Lassiter is of voting age, to wit, being more than 21 years of age and that she was of such voting age on and before the said 22nd day of June, 1957.

"3. That the said Louise Lassiter is "not now one of the persons excluded from eligibility to register and vote within the contemplation, meaning and intent of Section 163-24, of General Statutes of North Carolina, and was not on the 22nd day of June, 1957, within any of the categories of persons excluded from registration and voting by said statute.

"4. That the said Louise Lassiter, by virtue of her continuous residence in and claim of continuous residence in the aforesaid Seaboard Precinct, Northhampton County, North Carolina, is not eligible to register as a voter in [fol. 22] any other precinct in the State of North Carolina.

"5. That the said Louise Lassiter is not now registered and never has been registered as a voter for the purpose of voting in the said Seaboard Precinct, nor in any other voting precinct within the State of North Carolina, nor in any other town, city or State.

"6. That on the 22nd day of June, 1957, the said Louise Lassiter, in due and normal course and within the hour limits prescribed, presented herself to the duly appointed and acting registrar of the said Seaboard Precinct, to wit, Mrs. Helen H. Taylor, and requested to be registered as a voter for and in a special election scheduled to be held on July 13, 1957, for the voting citizens of Northhampton County.

"7. That upon presenting herself to the said registrar, the said Louise Lassiter subscribed to the oath generally and usually required of applicants for registration.

"8. That following the taking of and subscribing to said oath the said registrar, to wit, Mrs. Helen H. Taylor, presented to the said Louise Lassiter a printed copy of the Constitution of the State of North Carolina and requested and required of the said Louise Lassiter that she read certain designated sections thereof.

"9. That the said Louise Lassiter declined and refused to read the proffered sections of the said Constitution, or any other section thereof, as a prerequisite to her being registered as a voter, for that the said Louise Lassiter contended and asserted and still contends and asserts that such requirement of reading said Constitution was and is unlawful, the same being in violation of the Constitution and laws of the State of North Carolina, and the Constitution and laws of the United States.

"10. That the said registrar, to wit, Mrs. Helen H. Taylor, upon the declining and refusing of the said Louise Lassiter to read the proffered sections of the Constitution of North Carolina, then and there refused to register and did not register the said Louise Lassiter upon the ground that she, the said Louise Lassiter, failed to meet one of the prerequisites for registration, namely, reading any [fol. 23] section of the Constitution of North Carolina in the English language.

"11. That on the same day of refusal of registration to her, upon the ground hereinbefore set forth, to wit, on the 22nd day of June, 1957, the said Louise Lassiter gave written notice to the said registrar of appeal from said denial of registration by said registrar to the Board of Elections of Northampton County.

"12. That on the 28th day of June, 1957, the appeal of the said Louise Lassiter from the denial of registration by the aforesaid registrar was heard by and before the Board of Elections of Northampton County, sitting and convened as a body and administrative board in the Courthouse building of Northampton County, in Jackson, North Carolina.

"13. That the said Board of Elections of Northampton County, being duly constituted and convened, as afore-

said, heard and entertained the aforesaid appeal of the said Louise Lassiter *de novo*.

"14. That in said hearing and as a part of said hearing to determine the eligibility of the said Louise Lassiter to register as a voter, the said Board of Elections requested of the said Louise Lassiter that she read certain designated sections of the Constitution of North Carolina from a printed copy of said Constitution supplied her.

"15. That the said Louise Lassiter declined and refused the said Board's request and requirement that she read the proffered sections of said Constitution, or any other section thereof, as a prerequisite to her being registered as a voter, for that the said Louise Lassiter contended and asserted and still contends and asserts that such requirement of reading said Constitution was and is unlawful, and the same being in violation of the Constitution and the laws of the State of North Carolina, and the Constitution and laws of the United States.

"16. That the said Board of Elections, upon the said Louise Lassiter's failing and refusing to read the proffered sections of the said Constitution, or any other sections thereof, issued a written order and directed that the said Louise Lassiter be denied registration as a voter in the Seaboard Precinct, upon the ground that she, the said Louise Lassiter, failed to meet one of the prerequisites for registration, namely, reading any section of the Constitution of North Carolina in the English language.

"17. That on the 28th day of June, 1957, the said Louise Lassiter filed and caused to be filed with the Board of Elections of Northampton County a written notice of appeal from said Board's denial of registration as a voter to the Superior Court of Northampton County.

"18. That on the 5th day of July, 1957, the appeal of the said Louise Lassiter from the said Board in said matter to the aforesaid Superior Court was docketed in said Superior Court.

"19. That the said Louise Lassiter, because of her lack of educational qualifications, on June 22, 1957, and continuously since said date until the present date, is unable to and has failed and refused to write or read, or attempt to write or read, any section of the Constitution

of North Carolina, or any section of the Constitution of the United States in the English language.

"20. That aside from her failure, refusal and inability to read or write any section or sections of the Constitution of North Carolina, or any section or sections of the Constitution of the United States in the English language, the said Louise Lassiter meets the other statutory qualifications for eligibility to be registered as a voter in Seaboard Precinct, Northampton County, North Carolina.

"21. That this cause is duly before the Superior Court of Northampton County at this term in conformity with Chapter 163 of the General Statutes of North Carolina for trial or hearing and decision of the matters herein involved."

Upon these stipulations and applicable law petitioner through her counsel moved the court for directed verdict and finding in her favor. The motion was denied.

Petitioner through her counsel then made special request that the court make and enter the following finding of fact and conclusions of law, to wit:

"FINDING OF FACT

"That the Registrar of Seaboard Precinct of Northampton [fol. 25] ton County and the Board of Elections of Northampton County failed and refused to register petitioner Louise Lassiter as a qualified voter upon the ground that the said Louise Lassiter failed and refused to read or write any section of the Constitution of North Carolina, as required by North Carolina General Statutes, Section 163-28, as amended.

"CONCLUSIONS OF LAW

"1. That the requirement by the Registrar of Seaboard Precinct and by the Northampton County Board of Elections, in application of the provision of Section 163-28 of General Statutes of North Carolina, as amended, that the said Louise Lassiter be able to read or write any section of the Constitution of North Carolina, as a prerequisite to being registered as a qualified voter is unlawful, the same being in violation of Article VI, Section I of the Constitution of North Carolina, and in violation

of the 14th, 15th, and 17th Amendments to the Constitution of the United States.

"2. That the said Louise Lassiter is entitled to be registered as a qualified voter in Seaboard Precinct of Northampton County free of and without regard to any requirement of reading or writing any section of the Constitution of North Carolina as a prerequisite to such registration."

This special request for finding of fact and conclusions of law is denied.

Thereupon, Judge Paul, presiding at August 1957 Term, entered judgment in which it appears that "After reading and considering the agreed facts, and after hearing argument of counsel for the plaintiff and the defendant, the court is of the opinion that under said agreed facts plaintiff is not entitled to be registered as a qualified voter in Seaboard Township, Northampton County, North Carolina, for that said plaintiff does not meet the requirements of Chapter 163, Section 28, of the General Statutes of North Carolina" and "it is therefore ordered, adjudged and decreed that plaintiff is not entitled to be registered as a qualified voter in Seaboard Precinct, Northampton County, North Carolina, and that plaintiff's [fol. 26] prayer for relief as set out in her notice of appeal to this court be, and the same is hereby denied ***".

To the entry and signing of the foregoing judgment, plaintiff excepts and assigns a group of exceptions, and appeals to the Supreme Court of North Carolina, and assigns error.

Taylor & Mitchell,
James R. Walker, Jr. For Plaintiff Appellant

E. N. Riddle,
Fletcher & Lake For Defendant Appellee

Attorney General Patton,
Assistant Attorney General
Ralph Moody

Amicus Curiae.

WINBORNE, C. J.: The immediate question on this appeal is this: Is plaintiff, upon the agreed statement of facts, entitled to register for voting without meeting the test of

reading and writing any section of the Constitution of North Carolina in the English language, as required by General Statutes 163-28 as amended? The trial court was of opinion that plaintiff is not so entitled to register. This Court concurs in this ruling.

General Statutes 163-28 as amended by 1957 Session Laws of North Carolina, Chapter 287, Section 1, effective 12 April, 1957, under caption "Voters must be able to read and write; registrar to administer section," declares that "Every person presenting himself for registration shall be able to read and write any section of the Constitution of North Carolina in the English language," and that "it shall be the duty of each registrar to administer the provisions of this section."

And in the same act, 1957 Session Laws, Chapter 287, the General Assembly of North Carolina made provision (1) for appeal to County Board of Elections from registrar's denial of registration, G. S. 163-28.1; (2) for hearing *de novo* upon such appeal before County Board of Elections, G. S. 163-28.2; (3) appeal from judgment of County Board of Elections to Superior Court, and hearing thereon; and (4) appeal from judgment of Superior Court to Supreme Court, G. S. 163-28.3.

[fol. 27] The plaintiff applied for registration and refused to submit to, and qualify for the educational test,—that is, either to read or write any section of the Constitution of North Carolina as related in the foregoing stipulation of facts. And for this reason, and this reason alone, she was not admitted to registration.

At the outset she contends that the above provisions of G. S. 163-28 are unconstitutional by reason of conflict with the suffrage provisions of the Constitution of North Carolina.

In this connection it is appropriate to trace the history of Article VI, of the Constitution of North Carolina, omitting sections not necessary to inquiry in hand.

Beginning with the Constitution of the State of North Carolina "done in convention at Raleigh, the sixteenth day of March in the year of our Lord one thousand eight hundred and sixty-eight, and of the Independence of the United States the ninety-second," the pertinent provision as to "suffrage and eligibility to office" is contained in

Article VI, as amended by the Constitutional Convention of 1875, to read as follows:

"Section 1. Every male person, born in the United States, and every male person who has been naturalized, twenty-one years old or upward, who shall have resided in the States twelve months next preceding the election, and ninety days in the county in which he offers to vote, shall be deemed an elector. But no person, who upon conviction or confession in open court, shall be adjudged guilty of a felony or of any other crime infamous by the laws of this State, and thereafter committed, shall be deemed an elector, unless such person shall be restored to the rights of citizenship in a manner prescribed by law.

"Sec. 2. Registration of Electors: It shall be the duty of the General Assembly to provide, from time to time, for the registration of all electors, and no person shall be allowed to vote without registration, or to register, without first taking an oath or affirmation to support and maintain the Constitution and laws of the United States, [fol. 28] and the Constitution and laws of North Carolina not inconsistent therewith"

Thereafter the General Assembly of 1899 passed an act entitled "An Act to Amend the Constitution of North Carolina," P. L. 1899, Chapter 218, abrogating Article Six of the Constitution of North Carolina, and proposing a substitute thereof, to be submitted at the next general election on May 1, 1899; but it was not so submitted. However, the General Assembly, at its adjourned session of 1900, passed another act, Chapter 2, Laws of Adjourned Session 1900, entitled "An Act Supplemental to an Act entitled 'An Act to Amend the Constitution of North Carolina,' ratified February twenty-first, eighteen hundred and ninety-nine, the same being Chapter two hundred eighteen of the Public Laws of eighteen hundred and ninety-nine," reading as follows:

"The General Assembly of North Carolina do enact:

"Section 1. That Chapter 218, Public Laws of 1899 entitled 'An Act to Amend the Constitution of North Carolina,' be amended so as to make said act read as follows: 'That Article Six of the Constitution of North

Carolina be and the same is hereby abrogated, and in lieu thereof shall be substituted the following Article of the Constitution as an entire and indivisible plan of suffrage.

Article VI

Suffrage and Eligibility to Office

(Section 1) Every male person born in the United States, and every male person who has been naturalized, twenty-one years of age, and possessing the qualifications set out in this Article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided.

(Sec. 2) He shall have resided in the State of North Carolina for two years, in the county six months, and in the precinct, ward, or other election district, in which he offers to vote, four months next preceding the election: Provided, that removal from one precinct, ward, or other election district, to another in the same county, shall not operate to deprive any person of the right to vote in the [fol. 29] precinct, ward or other election district from which he has removed until four months after such removal. No person who has been convicted or who has confessed his guilt in open court upon indictment, of any crime, the punishment of which now is, or may hereafter be, imprisonment in the State's Prison, shall be permitted to vote, unless the said person shall be first restored to citizenship in the manner prescribed by law.

(Sec. 3) Every person offering to vote shall be at the time a legally registered voter as herein prescribed, and in the manner provided by law, and the General Assembly of North Carolina shall enact general registration laws to carry into effect the provisions of this Article.

(Sec. 4) Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language; and before he shall be entitled to vote, he shall have paid on or before the first day of May, of the year in which he proposes to vote, his poll tax for the previous year, as prescribed in Article V, Section 1, of the Constitution. But no male person, who was, on January 1, 1867, or at any time

prior thereto, entitled to vote under the laws of any State in the United States wherein he then resided, and no lineal descendant of any such person shall be denied the right to register and vote at any election in this State by reason of his failure to possess the educational qualifications herein prescribed: Provided, he shall have registered in accordance with the terms of this section prior to December 1, 1908.

The General Assembly shall provide for the registration of all persons entitled to vote without the educational qualifications herein prescribed, and shall, on or before November 1, 1908, provide for the making of a permanent record of such registration, and all persons so registered shall forever thereafter have the right to vote in all elections by the people of this State, unless disqualified under Section 2 of this Article: Provided, such person shall have paid his poll tax as above required.

(Sec. 5) That this amendment to the Constitution is [fol. 30] presented and adopted as one indivisible plan for the regulation of the suffrage, with the intent and purpose to so connect the different parts, and to make them so dependent upon each other, that the whole shall stand or fall together * * *."

Section 9 declares that if a majority of votes be cast at the next general election in favor of this suffrage amendment, it shall go into effect on July 1, 1902.

And machinery is provided for submitting the question to a vote of the people, and for determining and declaring the result of the election, and the certification and enrollment of the amendment among the permanent records of the office of Secretary of State.

The act was in force from and after ratification,—June 13, 1900.

The amendment to the Constitution was submitted to and approved by the qualified voters of the State at the next general election, and became Article VI of the State Constitution, and enrolled as required January 25, 1901.

Since the adoption of amendment last above mentioned, Article VI of the Constitution has been amended as follows:

(1) The General Assembly at its 1919 session, passed an act, Chapter 129, entitled "An Act to Amend the Constitution of the State of North Carolina," which amended Sections 2 and 4 of Article VI as follows: "VI. By striking out the first sentence of Section 2 of Article VI, and substituting therefor the following: 'He shall reside in the State of North Carolina for one year and in the precinct, ward or other election district in which he offers to vote, four months next preceding the election,'" and

"V. By striking out of Section 4 of Article VI the following: 'And before he shall be entitled to vote he shall have paid, on or before the first day of May in the year in which he proposes to vote, his poll tax for the previous year as prescribed in Article V, Section 1, of the Constitution.'" And the act declared that amendments IV and V as just stated be considered as one amendment and submitted to the voters of the whole State at the next general election. However, this was not [fol. 31] done. But at the extra session of 1920 the General Assembly passed Chapter 93 of the Public Laws of that session entitled: "An act to amend Chapter 129 of the Public Laws of 1919, and to further amend the Constitution of the State of North Carolina" as follows: "Section 1, Chapter 129 of Public Laws of 1919 be and the same is hereby amended so as to hereafter read as follows: 'Sec. 2. That the Constitution of the State of North Carolina be and the same is hereby amended in manner and form as follows * * *'

"IV. By striking out that part of the first sentence of Section 2 of Article VI ending with the word 'election' before the word 'provided', and substituting therefor the following: 'He shall reside in the State of North Carolina for one year and in the precinct, ward or other election district in which he offers to vote, four months next preceding the election.'

"V. By abrogating the following requirement of Section Four of Article VI: 'And before he shall be entitled to vote he shall have paid, on or before the first day of May in the year in which he proposes to vote, his poll tax for the previous year as prescribed by Article Five, Section 1, of the Constitution' and by abrogating the follow-

ing proviso at the end of Section Four, Article VI: 'Provided such person shall have paid his poll tax as above required.'

Moreover, the act, Chapter 93, Public Laws Extra Session 1920, declared that these amendments IV and V be considered as one amendment and submitted to the qualified voters of the whole State at the next general election. This was done, and the amendments were adopted and then enrolled by the Secretary of State on January 8, 1921.

The next amendment was proposed by the General Assembly 1945 Session Laws, Chapter 634, as follows: "Sec. 2. That Section 1 of Article VI of the Constitution of the State of North Carolina be amended to read as follows: 'Section 1. Who May Vote. Every person born in the United States, and every person who has been naturalized, 21 years of age, and possessing the qualifications set out in this Article, shall be entitled to vote at [fol. 32] any election by the people of the State, except as herein otherwise provided.'" This act repeals all laws and clauses of laws in conflict with its provisions. And the General Assembly authorized the submission of the amendment to the qualified voters of the State in the next general election. This was done, and the amendment was adopted, and then enrolled by the Secretary of State on December 10, 1946.

Lastly, the General Assembly at its 1953 session, Chapter 972, passed an act, the terms of which re-wrote the first sentence Section 2 of Article VI, so as to reduce the length of residence for voting in a voting precinct. And this was submitted to the qualified voters of the entire State at the 1954 general election and adopted, and then enrolled December 8, 1954.

Otherwise Article VI remained as adopted in 1902, as above recited.

The appellant contends that the indivisibility clause is a "built-in extinguishment of the entire 1902 amendment," and, that, as a result, the suffrage provisions are relegated to Article VI as it appears in the Constitution of 1868 as amended by the constitutional convention of 1875, and, hence, there is no constitutional authority for the

General Assembly to enact G. S. 163-28. But attention is directed to the 1945 amendment for such authority.

In this connection we find in 16 CJS 67 Constitutional Law, Section 26, this pertinent declaration of principle: "As the latest expression of the will of the people a clause in a constitutional amendment will prevail over a provision of the Constitution or earlier amendment inconsistent therewith, for an amendment to the Constitution becomes a part of the fundamental law, and its operation and effect cannot be limited or controlled by previous constitutions or laws that may be in conflict with it."

So, irrespective of the questions now raised, as to the validity of the provisions of the 1902 amendment, and as to the effect thereof upon the provisions of Article VI of the Constitution of 1868 as amended by the Constitutional Convention of 1875, when the General Assembly came to consider the proposed amendment of 1945, Article VI then factually appeared intact and unchallenged. Therefore the provisions of the 1945 amendment must be considered in the light of this fact. Thus, when, as to who may vote, the General Assembly declared that "Every person born in the United States, and every person who has been naturalized, 21 years of age, and possessing the qualifications set out in this article shall be entitled to vote * * *," the clause "possessing the qualifications set out in this article," was intended to mean, and was made certain by, [fol. 33] the qualifications appearing upon the face of the Article VI, so unchallenged. And one of those qualifications was set forth in Section 4 of Article VI wherein it was required that "Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language."

"In the absence of constitutional inhibition part or all of an existing statute may, by specific and descriptive reference thereto, be incorporated into another statute." 82 CJS 123, Statutes Sec. 70(b).

Indeed, under such circumstances, "the provisions of a law which lapsed or has been repealed may be made a part of a new statute by referring to the law in general terms and without incorporating such provisions at length; reference may be made to an act which is repealed and succeeded by the act making the reference for the

purpose of adopting provisions of the succeeded act; and repealed acts, some of which are invalid, may be adopted by reference for purposes of identification. The validity of the referring act is unaffected when it is complete within itself when read in the light of the matter so identified." 82 CJS 124, Statutes Sec. 70 (b).

And this Court in Lutz Industries v. Dixie Home Stores, 242 N. C. 332, 88 SE 2d, 333, opinion by Parker, J., declaring that "Unless prohibited by constitutional restrictions, reference statutes are frequently recognized as an approved method of legislation to avoid encumbering the statute books by unnecessary repetition," has applied the principle.

In this light, the 1945 amendment so proposed and later adopted had the effect of incorporating and adopting anew the provisions as to the qualifications required of a voter as set out in Article VI, freed of the indivisibility clause of the 1902 amendment. And the way was made clear for the General Assembly to act.

In this connection, a doctrine firmly established in the law is that a State Constitution is in no matter a grant of power: All power which is not limited by the Constitution inheres in the people, and an act of a State legislature is legal when the Constitution contains no prohibition [fol. 34] against it. 11 Am. Jur. 619—Constitutional Law.

The Constitution of North Carolina, Article 1, Sec. 2, declares: "All political power is vested in, and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole."

Moreover, it is noted in Guinn v. United States, 238 US 347, 59 L.Ed. 1340, that Chief Justice White of the Supreme Court of the United States, said: "No time need be spent on the question of the validity of the literacy test, considered alone, since as we have seen, its establishment was but the exercise by the State of a lawful power vested in it, not subject to our supervision, and, indeed, its validity is admitted. Whether this test is so connected with the other one relating to the situation on January 1, 1866, that the validity of the latter requires the rejection of the former, is really a question of State

law; but in the absence of any decision on the subject by the Supreme Court of the State, we must determine it for ourselves."

In this respect, the statute, then Section 5939 of Consolidated Statutes, later G. S. 163-28, was the subject of judicial interpretation by this Court, in the case of *Allison v. Sharp*, 209 N. C. 477, 184 SE 27, decided 26 February, 1936. And the Court, in opinion by Clarkson, J., held it to be constitutional.

And the provisions of G. S. 163-28 apply alike to all persons who present themselves for registration to vote. There is no discrimination in favor of, or against any by reason of race, creed, or color. Hence there is no conflict with either the 14th, 15th or 17th Amendments to the Constitution of the United States.

For reasons stated, the judgment from which appeal is taken is

Affirmed.

[fol. 35] IN SUPREME COERT OF NORTH CAROLINA
Spring Term, 1958

No. 170

Northampton County

LOUISE LASSITER

v.

NORTHAMPTON COUNTY BOARD OF ELECTIONS

JUDGMENT—April 21, 1958

This cause came on to be argued upon the transcript of the record from the Superior Court, Northampton County: Upon consideration whereof, this Court is of opinion that there is no error in the record and proceedings of said Superior Court.

It is therefore considered and adjudged by the Court here that the opinion of the Court, as delivered by the Honorable J. Wallace Winborne, Chief Justice, be certified to the said Superior Court, to the intent that the Judgment is affirmed: And it is considered and adjudged further, that the plaintiff and surety to the appeal bond, Herbert Brown do pay the costs of the appeal in this Court incurred, to wit, the sum of Thirty-five and 00/100 dollars (\$35.00), and execution issue therefor.

[fol. 36] IN THE SUPREME COURT OF THE STATE
OF NORTH CAROLINA

Appeal docketed	21 August 1957
Case argued	18 September 1957
Opinion filed	9 April 1958
Final Judgment entered	21 April 1958

CLERK'S CERTIFICATE

I, Adrian J. Newton, Clerk of the Supreme Court of North Carolina, do hereby certify the foregoing to be a full, true and perfect copy of the record and the pro-

ceedings in the above-entitled case, as the same now appear from the originals on file in my office.

I further certify that no petition to rehear has been filed, and that the time for filing such petition, under the rules of this Court, has expired.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at the office in Raleigh, North Carolina, this 6 August, 1958.

ADRIAN J. NEWTON

*Clerk of the Supreme Court
of North Carolina.*

By /s/ SARAH G. BARBEE
Deputy Clerk

[fol. 37] IN THE SUPREME COURT OF NORTH CAROLINA

* * *
CERTIFICATE OF SERVICE OF NOTICE OF APPEAL

(Omitted in Printing)

* * *
[fol. 38] IN SUPREME COURT OF NORTH CAROLINA
Fall Term, 1957

* * *
NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—Filed July 2, 1958

1. Notice is hereby given that Louise Lassiter, appellant above named, hereby appeals to the Supreme Court of the United States from the Final Judgment of the Supreme Court of the State of North Carolina, filed on the 9th day of April, 1958, and which affirmed the judgment of the Superior Court of Northampton County, entered in this action on the 9th day of August, 1958, and in which latter mentioned judgment appellant, as defendant in the Superior Court of North Carolina was denied the right to register as a voter in said County, thereby being denied the right to vote. Notice is further hereby given that appellant hereby appeals to the Supreme Court

of the United States from the Final Judgment above mentioned of the Supreme Court of the State of North Carolina, which affirmed the judgment of the Superior Court of Northhampton County, as above mentioned, for that, in the latter mentioned judgment, appellant was denied the right to register as a voter, upon the alleged grounds that she failed to qualify under the so called North Carolina literacy test.

2. Notice is also hereby given that appellant hereby appeal to the Supreme Court of the United States from the [fol. 39] Final Judgment above mentioned of the Supreme Court of the State of North Carolina, which affirmed the judgment of the Superior Court of Northhampton County, as above mentioned, for that, in the latter mentioned judgment, the statute of the State of North Carolina which purportedly requires a literacy test, to wit, North Carolina General Statute 163-28, was held to be valid and constitutional over appellant's objection and exceptions, as applied to her and to her right to register as a voter.

3. This appeal is taken pursuant to 28 U. S. 1257(2).

4. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in the said transcript the following:

(a) The Record in this cause as filed and printed for the use of the Supreme Court of North Carolina during the Fall Term, 1957, number 172, and which Record indicated and included all of the proceedings which were held before the Superior Court of Northhampton County, State of North Carolina and before the precinct registrar and the County Board of Elections.

(b) The Opinion of the Supreme Court of North Carolina, which was filed the 9th day of April, 1958.

(c) The mandate or judgment of the Supreme Court of North Carolina, which was entered upon the Opinion of the Supreme Court of North Carolina.

(d) Notice of Appeal to the Supreme Court of the United States, with attached Certificate of Service of Notice of Appeal.

5. The following questions are presented by the Appeal:

- (a) Is North Carolina General Statute 163-28 valid and constitutional, when measured by the standards of the Due Process Clause of the 14th Amendment to the Federal Constitution, in so far as it purports to [fol. 10] provide for a so called literacy test based upon the reading and writing of "any section" of the Constitution of North Carolina, as against appellant's contentions that the said test is arbitrary, capricious, subjective and without legal administrative standards?
- (b) Is North Carolina General Statute 163-28 valid and constitutional, when measured by the standards of the Equal Protection Clause of the 14th Amendment to the Federal Constitution, in so far as it purports to disfranchise the class of citizens who are otherwise entitled to the franchise, solely because of their lack of ability to read and write "any section" of the Constitution of North Carolina, as against appellant's contentions that the said statute is a discriminatory and arbitrary attempt to bestow the privilege of the franchise only upon the class of citizens who can read and write "any section" of the state Constitution?
- (c) Is North Carolina General Statute 163-28 valid and constitutional, when measured by the standards of the Privileges and Immunities Clause of the 14th Amendment to the Federal Constitution, in so far as it purports to disfranchise the class of citizens who are otherwise entitled to the franchise, solely because of their lack of ability to read and write "any section" of the Constitution of North Carolina, as against appellant's contentions that the said statute is an arbitrary denial of fundamental privileges and immunities of citizens of the United States.
- (d) Is North Carolina General Statute 163-28 valid and constitutional, when measured by the standards of the 15th Amendment to the Federal Constitution, in so far as it is based and predicated entirely upon the purported 1945 revival of the 1902 invalid and unconstitutional provisions, to wit, Article VI, Section 4 [fol. 41] of the Constitution of North Carolina, which unconstitutional provisions purport to provide voting privileges for certain white citizens without exposure

or subjection to the so called literacy test to which
appellant, as a Negro, must be exposed and subjected?

(e) Is North Carolina General Statute 163-28 valid
and constitutional, when measured by the standards
of the 17th Amendment to the Federal Constitution,
in so far as it denies to appellant the opportunity
to participate in federal elections solely because of
the inability to read "any section" of the Constitution
of North Carolina, as against appellant's contention
that said statute denies to her fundamental rights
which are guaranteed by the Federal Constitution?

This 1st day of July, 1958.

TAYLOR & MITCHELL

By /s/ **SAMUEL S. MITCHELL**
Samuel S. Mitchell

125 East Hargett Street,
Raleigh, North Carolina

/s/ **JAMES R. WALKER, JR.**
James R. Walker, Jr.
Weldon, North Carolina

[fol. 42] SUPREME COURT OF THE UNITED STATES
No. 229 Misc., October Term, 1958

Louise Lassiter, Appellant,

vs.

Northampton County Board of Elections

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN
FORMA PAUPERIS—December 15, 1958

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis*,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

Mr. Justice Frankfurter took no part in the consideration or decision of this motion.

[fol. 44] SUPREME COURT OF THE UNITED STATES
No. 229 Misc., October Term, 1958

(Title Omitted)

ORDER NOTING PROBABLE JURISDICTION—December 15, 1958

APPEAL from the Supreme Court of the State of North Carolina.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the appellate docket as No. 584 and placed on the summary calendar.

December 15, 1958

Mr. Justice Frankfurter took no part in the consideration or decision of this application.